

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEWART DICKLER,	:	CIVIL ACTION
BEECH TREE RUN, INC.,	:	NO. 90-CV-4288
<i>et al.</i> ,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CIGNA PROPERTY AND	:	
CASUALTY CO., AND PACIFIC	:	
EMPLOYERS INSURANCE CO.,	:	
Defendants.	:	

NEWCOMER, S.J.

May 10, 2005

**MEMORANDUM AND ORDER**

Presently before the Court is Plaintiff Beech Tree, Inc.'s ("Beech Tree") Renewed Motion to Amend Judgment and Friends of Associated Beth Rivka Schools for Girls' ("Beth Rivka") Motion to Vacate or Set Aside Judgment. For the reasons set forth below, Beech Tree's Motion is granted and Beth Rivka's Motion is denied. An appropriate Order follows.

**I. BACKGROUND**

The instant Renewed Motion arose in a lawsuit originally filed in 1990 over the scope of insurance coverage related to property in New York destroyed by fire. On June 23, 1993, a stipulation ("Proceeds Stipulation") ended the insurance phase of the litigation, requiring "Machne Israel, Inc." to complete construction of a school in Brooklyn within a specified time. Machne Israel, however, failed to timely complete construction of the

school, and on January 26, 1996, the original Plaintiffs filed a motion to enforce the Proceeds Stipulation. The Court initially denied Plaintiffs' Motion but later extended the deadline for completing construction on the school. Once again, Machne Israel failed to complete construction on time.

Consequently, on March 19, 1998, this Court issued an Order to enforce the Proceeds Stipulation, directing Beth Rivka to repay Plaintiff Beech Tree \$1,877,500.00. The Order was reinstated by this Court on January 17, 2003, and was affirmed by the Third Circuit. Beech Tree was unable to execute on its Judgment because the property on which the school was built was owned by several business entities not specifically named in the Order. A title search revealed that the following entities held title to the following lots:

Lots 19, 22, 36, & 37:  
"Friends of Associated Beth Rivka School for Girls"  
Lots 23, 24, & 25:  
"Associated Beth Rivka School for Girls"  
Lot 27:  
"Friends of Beth Rivka Schools, Inc."

This Court notes that there are actually only two corporations that are at issue here, (1) "Friends of Associated Beth Rivka School for Girls"; and (2) "Associated Beth Rivka School for Girls". Only these two corporations are involved here because "Friends of Beth Rivka Schools, Inc." changed its business name to "Friends of Associated

Beth Rivka School for Girls" on March 5, 1981, leaving all lots at issue, except Lots 23-25, under its ownership.<sup>1</sup> Friends of Associated Beth Rivka School for Girls is the parent corporation that conducts fund raising for the school; Associated Beth Rivka Schools for Girls actually operates the school.

## II. DISCUSSION

### A. The Court has personal jurisdiction over Associated Beth Rivka School for Girls.

This Court has personal jurisdiction over Associated Beth Rivka School for Girls because that entity consented to the jurisdiction of this Court. The Third Circuit has found that "[t]hough not a 'party,' [Beth Rivka] has fully involved itself in this litigation" and thus this Court had personal jurisdiction over it.<sup>2</sup> Numerous submissions have been filed with this Court on behalf of Associated Beth Rivka School for Girls.<sup>3</sup> This non-party has thoroughly involved itself in this litigation, and thus has consented to jurisdiction.<sup>4</sup>

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<sup>1</sup> Although Friends of Associated Beth Rivka School is the successor to Friends of Beth Rivka Schools, Inc., the Court will amend the Judgment to include Friends of Beth Rivka Schools, Inc. to aid in execution of the Judgment.

<sup>2</sup> See Dickler v. Cigna, No.01-3534, slip op. at 6 (3d Cir. Oct. 4, 2002) (emphasis added).

<sup>3</sup> See docket entries 195, 196, 197, 218, 231, 246, and 247. Associated Beth Rivka Schools for Girls, Inc. also submitted Documents 206, 209.

<sup>4</sup> It is well established that "an individual may submit to the jurisdiction of the court by appearance." Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee, 456 U.S. 694, 703 (1982) (citation omitted).

B. Merits of the Beech Tree's Motion to Amend

Beech Tree argues that it is entitled to amend the Judgment under either FED. R. CIV. P. 60(a) or 60(b). The latter is the applicable rule because the Court has not made any clerical oversight or omission in its January 17, 2003 Order. FED. R. CIV. P. 60(b)(6) authorizes district courts to "relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . .

(6) any other reason [besides those provided for in Rules 60(b)(1)-(5)] justifying relief from the operation of the judgment."

In this case, amending the Judgment to include "Associated Beth Rivka School for Girls" would expedite the execution process and finally allow Beech Tree to satisfy its seven-year old Judgment. This furthers this Court's interest in preserving the integrity of its judgments. Contrary to Beth Rivka's argument, the Rule 60(b)(6) Motion was timely because it was made within a reasonable time - four days after this Court's January 17, 2003 Order. See FED. R. CIV. P. 60(b).

C. Beth Rivka's Motion to Vacate or Set Aside Judgment

This Court is unpersuaded by Beth Rivka's argument that equity dictates vacating its January 17, 2003 Order. The Judgment is fast becoming stale, and the Court will no longer entertain motions to vacate that have been raised and re-raised for several years. Equity dictates that this

Court's January 17, 2003 Judgment, recently upheld by the Third Circuit, be satisfied. Beth Rivka's Motion must be denied.

An appropriate Order follows.

S/ Clarence C. Newcomer  
United States District Judge

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Defendants.	:	

**O R D E R**

AND NOW, this 10<sup>th</sup> day of May, 2005, upon consideration of Beech Tree Run, Inc. and Judith Kates' (the "Movants") Renewed Motion to Amend Judgment (Doc. 286), a Response filed by Friends of Associated Beth Rivka School ("Beth Rivka"), and Movants' Reply, it is hereby ORDERED that Movants' Motion is GRANTED. In keeping with the conditions and terms of the Proceeds Stipulation, the Judgment in the above-captioned case shall be modified as follows:

"Friends of Associated Beth Rivka School for Girls" (or alternatively, "Friends of Associated Beth Rivkah School for Girls"), "Associated Beth Rivka School for Girls" (or alternatively, "Associated Beth Rivkah School for Girls"), and "Friends of Beth Rivka Schools, Inc." (or alternatively, "Friends of Beth Rivkah Schools, Inc.") shall pay to Beech Tree Run, Inc. the amount of \$1,877,500.00 plus post-judgment interest from July 1, 1993 to the date of payment.

It is also ORDERED that (1) Beth Rivka's Motion to Set Aside Judgment (Doc. 290) is DENIED; (2) all motions seeking leave to file reply briefs are GRANTED; and (3) Movants'

duplicative Motions to Amend Judgment (Doc. 252 & 314) are  
DENIED as moot.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.  
United States District Judge